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THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT.

INTRODUCTORY.

The supervision and protection of public trusts is an important function of government. Accordingly when the British Government became established in India the temples were managed by the Revenue Department, with the Board of Revenue at the top. Managers under the control of the Revenue Officers were in direct charge of temples. Even now, *charitable* trusts are thus controlled. For this purpose government did not levy any tax or contribution from the temple funds. The government management was on the whole satisfactory and beneficial to the temples.

About the middle of the 19th Century, the Christian Missionaries strongly agitated and protested in England and in India against the management of the *heathen* temples by the *Christian* government. In the result, the Indian government resolved to divest itself of the control over temples, and transfer the same to individuals or committees. Transfer to such individuals gave rise to the system of hereditary trustees in the case of important temples, who have since developed into practical masters of the institutions. The temple committees were constituted under Act X of 1863 (Government of India). The members of the committee were appointed by District Judges; and the committees appointed trustees to the temples made over to them.

There were also temples which never came under the control of Government, and were not affected by this Act. Their number, of course, is daily increasing.

That Act, however, was very defective. The rights, duties and liabilities of trustees were not defined. It was impossible for the committee to control effectively the trustees, and for the

latter, the temple servants, except through wearisome and costly litigation. In such cases, the trustee in possession had always an advantage by reason of the possession of the temple funds. The committee members and trustees held office for life unless removed by the Court. There were no effective means of enforcing the obligation of the trustees to furnish accounts nor was there any provision to get the accounts audited!

These and similar defects became apparent very soon after the passing of the above Act; and demands were made for its drastic amendment. Government appointed from time to time, beginning from 1874, committees to draft amending bills, with eminent men like Dewan Ramaiengar, Justice Muthuswami Iyer and Dewan Bahadur S. Srinivasaraghava Iyengar at the head; and several proposals were made. Nevertheless, government would not or could not put any legislation through, until the Montford Reforms came and a sort of democracy was established. The late Rajah of Panagal had thus the opportunity for supplying a long-felt want and earn the gratitude of the public. He had the advantage of being at the head of a government representative of the people concerned in the protection of temples, unfettered by the limitations of a foreign and christian rule. But he had also the handicap of leading a party based on communalistic ideas whose prejudices he could not altogether disregard.

The Object of the Act.

It was claimed for the Act passed by him that it was designed (*i*) to ensure the *efficient management* and protection of Religious Endowments, and (*ii*) to prevent *wasteful litigation* in respect of them. It limited the terms of office of the members of committees and trustees of temples to five years. Their respective rights and duties have been in a way defined; and disciplinary powers are given to committees over trustees, and to the latter over temple servants. The trustees are required to keep regular accounts and provision is made for their periodical audit. The trustees are further under obligation to maintain proper registers of temple properties and also to submit budgets regarding the annual income and expenditure of the temple before the year commences. The trustees should not alienate temple properties without the previous sanction of the Board. There are also other provisions which need not be recounted here. If properly carried out, these provisions are bound to ensure the achievement of the first of the above objects.

Tax on Temple Income.

As against all this, the Act has, for the first time, introduced element of taxation on the temple funds, to get a duty performed otherwise, which the Government itself is bound to do. On the *gross* income of temples, 1½ per cent. is levied to meet the expenses of the Board, 1½ per cent. for the committee, and by the latest amending Act another 1½ per cent. to meet audit expenses. Thus 4½ per cent. of the *gross income* of temples is taken away from them. The question is therefore naturally asked, whether temples have received advantages under the new dispensation, in proportion to the taxes paid by them, which many temples cannot do without detriment to their own maintenance.

Litigation Expenses.

The second of the claims, namely, the prevention of *wasteful litigation,* has become practically frustrated, in the actual working of the enactment. No doubt, litigation of the older sort between trustees and committees, and trustees and temple servants have become rare. But litigations of a different sort, and which must be said to be equally *wasteful* and *avoidable,* have cropped up throughout the Presidency, consequent on the orders of the Board under this Act. Under section 68, the Board is entitled to levy from the temples concerned, *all the expenses* (not merely Court costs) in respect of *all* its litigation—by it or against it—no matter whether it succeeds or fails in its enterprises; and this is recoverable under section 70, like land revenue from the concerned temple's properties. The Board's budgets under Law charges will show that this amount is on the average Rs. 25 to 30 thousands a year; and this is exclusive of the special expenses in respect of the *archaka suits* in Northern Circars for which large special loans were obtained from government and repaid with interest. In all such cases, the trustees concerned also take equal, if not larger amounts from temple funds for their own expenses. What is the total thus spent from the temple monies during these 12 years of the working of the New Act? Would it not be at least Rs. 10 lacs and what is the corresponding benefit? Very large sums spent by the Board in such litigation still remain unrecovered or irrecoverable from the institutions concerned. Be it noted that all this is in addition to the 4½ per cent. levy on the *gross* income as already stated. In the "critical review" of this Act contributed by me early in 1925, to the Madras Law Weekly, in which I took exception to the investing of the Board with judicial functions, providing for the dissatisfied party to take the matter to Courts,

I drew attention to the strong objections against such a measure and stated "This will not only *add* to litigation but also give rise to frequent abuse of legal process." It is worth while to examine whether my apprehensions were not justified in experience. I then suggested that the functions of the Board should be limited to administration only. Another class of litigation, comprises suits, etc., between rival sectarian factions, especially in Vishnu temples which have really nothing to do with the temple services as laid down in the *sastras*. Trustees often side with one or the other of these factions and freely make use of the temple funds in such fights; and the Board not infrequently gets involved in them, through its inherent powers being invoked by one party or another. Section 79 which is designed to prevent the Board, the committee or the trustee from having anything to do with such matters, is not infrequently interpreted so as to lead to the opposite result.

Principal Objection to the Act.

The main and the most weighty objection to Act was with reference to the creation of the Endowment Board and investing it with judicial functions which appropriately belong to Courts, without, at the same time, subjecting the Board to the rules of evidence and procedure which bind the Courts. No doubt by the rules made under the Endowments Act, certain rules are prescribed for the conduct of enquiries before it. But they offer no impediment to the free exercise of power by the Board without resort to judicial procedure. In a case under the Act reported in *Sri Iswarananda Bharathi Swami* v. *H. R. E. Board, Madras,*[1] his Lordship Anantakrishna Iyer, J., drew attention to the rule which runs thus: "It shall not be necessary to take down the evidence of the witness in writing at length, but as the examination of each witness proceeds a memorandum of the substance of what each witness deposes shall be written and signed by the presiding Commissioner, or by the Commissioner, as the case may be, and shall form part of the record", and was of opinion that therefore the decision of the Board could not be said to be that of a 'judicial tribunal'. His Lordship Reilly, J., after noting that "only one of the members of the Board need be a person of any legal training or experience", further observed on the procedure adopted by the Board thus: "There need be no pleadings on record. Evidence need not be given an oath, and none need be recorded. No reason need be given for the decision. No pleader need be heard. The pro-

1. (1932) 63 M.L.J. 254: I.L.R. 56 Mad. 40.

ceedings need not be conducted in public. The local Government by rules and the Board itself by bye-laws have provided for some of these things; but they need not have done so." At the same time it cannot be denied that the Board, in the actual administration of the salutary provisions of the Act, not infrequently meet with experiences, which would seem to justify its possessing summary and drastic powers if it were to function at all for the benefit of the institutions under its control. This is because of the Religious Endowments becoming somehow involved in politics directly or indirectly and being exploited by the adherents or partisans of the party in power.

Lord Reading saw the mistake of taking away the common law right of seeking relief in Court and of making the arbitrary decisions of an essentially administrative body final. While giving assent to the Act, he observed that "he could not shut his eyes to the fact that there is a large amount of *dissatisfaction* and *apprehension* in regard to some portions of the Act". The italics are mine. He, therefore, made provisions in the Act for certain matters being taken to Court by a party who was dissatisfied and aggrieved with orders of the Board. He further advised the Minister and the Council to introduce suitable amending bills to cure the serious defects pointed out, and for obvious reasons. Temple property is not like private property; and there may not be many to risk their own money and trouble merely to safeguard temple interests. But this never came to pass. On the other hand amending bills of a different character, culminating in what was called the "Koti Reddi Bill" were passed from time to time by the party Council to augment the powers of the Endowments Board and in effect secure its actions against intervention by Courts.

It is neither just nor equitable nor warranted by the exigencies of the Religious Endowments themselves to curtail the ordinary jurisdiction of Civil Courts. From the nature of things and in the situation in which the Endowment Board finds itself, arbitrary action is often inevitable; and when it yields to it, it comes in for the remarks of the public and of the Courts. In one case in Madura, commenting on the action of the Board Mr. (now Justice) Wadsworth, the District Judge, observed "now, I think it must be assumed in favour of the Board that there was no intention to act illegally. We must, I think, also assume that the Board did not intend to use the somewhat vague phraseology of section 18 as a cloak for *arbitrary* and *illegal* action".[1]

1. M.P. No. 399 of 1933 in O.S. No. 4 of 1922, District Court, Madura.

Comment on this is needless. The natural reaction was to reduce the powers of the Courts over the Board to as small a minimum as possible; and this has been done by the amendments referred to above. At present the Board possesses practically unlimited powers over Religious Endowments. More of this later on. Quite recently in a matter in which the Board was alleged to have acted illegally, his Lordship Pandrang Row, J., ruled that even the High Court could not give relief by way of writ, as the act complained against, was "administrative" only.[1]

Opposition to Panagal's Bill.

Such being the nature of this new Law, it met with objections from all quarters, from the very beginning. In the select committee to the Bill, were the veteran lawyers and politicians, the late Messrs. Govindaraghava Iyer and M. Ramachandra Rao, who strongly expressed themselves, among other things, against the investing of the Board with judicial powers; and the protest was continued in the Council discussions and outside by the public. The Rajah got over it not merely by his party votes, but also by a promise to bring in a suitable amending bill at an early date. (But he never became Minister again.) *Vested* interests of which there were very many even within his own party, were pacified by the demarcation of certain temples as "excepted", over which the Board alone could exercise power and even then only to a very limited extent. Another powerful opposition was from the heads of *Maths,* which were for the first time declared trusts and brought under the purview of the Act. The heads of the more important maths after waiting in deputations on the Governor and the Viceroy, filed suits in the High Court questioning the validity of the Act in so far as they were concerned. The Act has a provision (Section 3) under which government can exempt any religious institution wholly or in part, from its application. By a judicious use of this power, the Raja effected peace with the said Mathadhipathis, who thereupon withdrew their suits.

Judicial Functions of the Board.

1. SETTLEMENT OF SCHEMES.

During the long period when the Act XX of 1863 was in force, the only way of setting right the affairs of mismanaged temples was by settling schemes of management by Courts, at the instance of persons interested in them. The trustees, with the resources of the temples in their hands, used to resist the

1. *Sreenivasa Aiyangar* v. *H. R. E. Board, Madras,* (1937) 1 M.L.J. 442.

same as far as possible. For obvious reasons, suits for schemes in many cases ended in compromise schemes, not altogether satisfactory. Nevertheless they have served well and should not be lightly interfered with. In the present Act, therefore, while the power to settle schemes is transferred to the Board, schemes already made by Courts cannot be touched except by the Court itself. [Section 75 read with Section 57 (4) and Section 64.] The schemes settled by the Board are liable to be taken to Courts for cancellation or modification; and when this is done, the Court alone can thereafter deal with such schemes. Many schemes have gone up to the High Court and even to the Privy Council.

In framing a regular and detailed law for the administration of temples, there should be no need for still resorting to the process of settling schemes for their management. The Act should be self-sufficient. Provisions for schemes of management are not found in the laws of local Boards or Municipalities or even Village Panchayats though local conditions differ. After all, schemes only provide for the periodical appointment of trustees and the manner in which such appointment should be made, for the maintenance of regular accounts and their audit, for the appointment of paid managers and treasurers, for directions for the management of the temple properties and the like. When the Government was itself managing temples, there was no scheme. In Mysore the Muzrai Department, which is only the Revenue Department, controls the management of temples in the same manner in which it does the other public departments. No contribution is levied from temples for this purpose.

The retention of the power of settling schemes, in the Act, is therefore an anomaly. It was perhaps necessitated by its defects in other respects.

In effect, it sets the Board free from the control of Courts and even of Government. It can now, notwithstanding the other provisions of the Act, by way of settling schemes, remove trustees hereditary or non-hereditary otherwise entitled to remain in office, appoint new trustees, add to or diminish their number, define the powers and duties of trustees in their own way and appoint salaried executive officers, with powers which may conflict with or override those of trustees under the Law. How this last could be done in the face of statutory responsibilities of trustees singly or jointly and severally, it is not easy to understand. These may happen to excepted temples also, although a previous chapter of the Act lays down limits for the powers

of the Board over them. (Ss. 5 and 6, amending Ss. 57 and 63 of Act II of 1927.)

2. NOTIFICATION OF TEMPLES.

The most drastic amendment to the Endowment Act is the one relating to "Notification" of temples. It is like the promulgation of *Martial Law* suspending normal Government, but with this difference that while the application of the *Martial Law* may be withdrawn sooner or later, there is no provision for recalling the notification of a temple and restoring it to ordinary administration! The predominant idea in this is the getting rid of the Court or Government intervention thereafter with the actions of the Board! This is contained in the new Chapter VI-A of the Act. (S. 65-A.)

Under it, the Board may for its own reasons after making an enquiry, of course in the usual manner, decide by a committee of three Commissioners (out of five, the full number) that a temple shall be *notified* in the *Fort St. George Gazette*. An appeal may be made against this decision to the Full Board, but with what effect heaven knows, when the majority of it has given the original decision! Neither Government nor Courts can question it; and the Government is bound to publish such notification. When this is done, all schemes of temples already settled, whether by the Board or Courts up to the Privy Council, to any temple or endowment and all rules thereunder *cease* to apply to them. Committees cease to have jurisdiction over such temples, they coming directly under the orders of the Board thereafter. The contribution payable to the committee goes to augment that of the Board. The Board, moreover, gets power to appoint salaried executive officers for notified temples and invest them with such powers as it would, and pay their salaries out of the temple funds. Put briefly, the effect of the notification of a temple is to remove it from the application of the normal provisions of the Law and the Endowment Act, and leave it to be governed by such directions as the Board may issue!

There is absolutely no justification for investing the Board an ordinary administrative body, with such arbitrary and uncontrolled powers over temples and their endowments. If the trustee misbehaves, he is subject to disciplinary action. If the Committee misbehaves, the Board may, subject to the procedure laid down, perform all or any such duties left unperformed by it. Government has power to abolish committees. There are Courts to protect the civil rights of aggrieved parties. One may rightly ask, how the Board is qualified to summarily do away with the

schemes even of the highest Courts, settled at considerable cost of money, time and labour; and whether one would like his own personal rights affected and personal matters settled in the same summary manner? What is the great public danger which should be averted so urgently and so autocratically?

The Court schemes are a bug-bear to the Board as they reserve certain powers with the Courts, such as the appointment of paid trustees to important temples and the regulation of the appointment of honorary trustees thereto and giving directions to them. Some times valid reasons may not be found to induce Courts to modify their schemes as the Board would desire; and the modification, if any, could be effected only by suits. Committees and trustees considered undesirable cannot be removed easily in the usual course. The scope that the new procedure affords for exercise of patronage must necessarily have its psychological effect. The net result has been a wide resort to this procedure. It is understood that at present notification proceedings are pending before the Board against a very large number of temples. Government would do well to call for them and examine the "reasons" assigned by the Board for starting them, and satisfy itself regarding the necessity for such drastic steps.

Giving the Board such a power is both unnecessary and unwarranted. The exercise of such arbitrary powers can never escape, at any rate, the charge of political or party influence.

3. APPLICATION OF THE SURPLUS FUNDS.

Another important power of the Board is that which enables it to declare that there are surplus funds in religious institutions and to direct such surplus to be "appropriated to religious, educational or charitable purposes *not inconsistent* with the objects of such math or temple." (S. 67.) This is pre-eminently a function of the civil court bound by the laws of procedure and evidence, apart from the "purposes" indicated above. There has been a great deal of opposition to this provision. Even under the English Law such diversions can be made only in respect of *charitable* endowments, as distinguished from religious endowments—temples and maths with us. I repeat what I said in 1925 in the article referred to above. It is this: "It is unthinkable to a Hindu unsophisticated with western notions that a temple or math can "cease to exist" or "its purpose can become impossible of realisation," or "the machinery to carry it out fails" or a "surplus will be left which will not be required for their purpose". There is no limit to what may be spent on a temple or a

guru. To spend such *surplus* if *any* even on purposes of *religion*, etc., *not inconsistent* with the objects of such math or temple will do violence to Hindu religious sentiments." If such diversions be permissible at all, it should be only in favour of purposes "consistent" with the original objects of the endowments and not otherwise.

There was a regulation of 1817, which enabled Government to utilise the surplus temple monies for building hospitals, making roads, constructing bridges, and for similar works of public utility. It was repealed by the Panagal Act rightly. But the wrong has been perpetrated, though in a different manner in the new Act also, under this section.

In any event, the transfer of that power from the Court to the Board which is not bound by any law of procedure or evidence even to decide in the first instance, cannot be justified even on the ground of expediency.

Alienation of Temple Property.

This is a serious affair. Under the present Act the trustee is enabled to do it with the sanction of the Board. (S. 76.) Ordinarily the trustee has responsibility, both civil and criminal, in intermeddling with the trust property. The temple interests would be safeguarded, only if such responsibility is left intact. If, on the other hand, as the Endowment Act has done, it is made possible for the trustees and the Board to deal freely with trust properties leaving persons "having interest" to take the matter to the Court if they would, where is real protection against improper alienations? Why not leave it to the Court itself to permit or not the trustee to dispose of temple properties within the limits of law? The same responsibility should be borne by the trustees in lending out temple monies or purchasing properties out of them or otherwise investing the same. A summary mode of approaching Courts by an application may with advantage be substituted for the present procedure.

Other Judicial Functions of the Endowment Board.

One of the functions which occupies a considerable time of the Board and involves a lot of litigation, is laid down in S. 84 of the Act. Under it the Board has to decide whether an institution is a math or temple as defined by the Act (*i.e.*, Public) and whether a temple is excepted. The original definition of "excepted temples" which was intended to give protection to temples which never came under the supervision of Government before it divested itself of direct management, was amended subsequently, with

the result that it has given rise to unexpected results, and strange claims to hereditary trusteeship!

Another section (77) enables the Board to allocate between religious and secular trusts, when the Endowment happens to be mixed up.

There are other sundry items also which need not be stated here.

The Functions of the Endowment Board.

Section 18 of the Endowments Act sets forth the purpose for which the Board is constituted. It is the "superintendence" of Religious Endowments and the "doing of all things reasonable and necessary to ensure that they are properly administered and duly appropriated to the purposes for which they were founded or exist". In practice this primary function of the Board is thrown into the back ground and its time and resources are spent mostly on extraneous judicial, quasi-judicial, and other work, which have given rise to huge "wasteful and avoidable litigation" as already indicated, and made the Board unpopular. There seems to be no virtue in calling upon people all over the Presidency to go over to Madras at great expense and trouble to take summary decisions from the Board and then put them again into the Courts in their own place if they chose!

Even the normal business of the Board as defined in S. 18, is far too much for a single Board. It has really as much work as the Board of Revenue has and would require a staff—at Madras, the Districts and Taluqs—similar to that of the latter. How is that to be obtained? Already about 20,000 temples have been brought into the list; and there may be many more. The administration reports of the Board show that the largest number of temples visited by a Commissioner during a year never exceeded 130. The District Staff of the Board consists of a solitary miserable Inspector or Assistant Inspector! Indeed such difficulties have been anticipated; and S. 10 of the Act provides for the creation of more Boards than one, which would have come into existence if only money had become available.

The idea of a *Central Board* was long ago mooted in some of the old committees appointed for the revision of Act XX of 1863 as a necessary alternative for government refusing to have direct control of the temples. The *pros* and *cons* regarding the desirability and the utility of such a Board were thoroughly threshed out and the idea was finally abandoned as early as 1893 by the Muthuswami Iyer Committee. Raja of Panagal's Bill

too did not have it in the first draft. The idea suddenly came up only during the sittings of the select committee. There has been strong opinion against it and it has been viewed as a place of patronage for the party in power.

In one of my discussions on the present Endowment Act with the late Dewan Bahadur Muniswami Naidu Garu, sometime Chief Minister, he opined that the position of the Endowment Board was like that of the Police Commissioner, it being required to pass orders without loss of time, leaving any mistakes to be righted by Courts in due time. With respect, I differed, from him, for reasons principally that the Board (I was in it then) cannot be confronted with such emergencies as the police may encounter and that temples being nobody's private property and politics largely interfering in their administration, individuals who would and could pursue the matter in Courts of Law, would be forthcoming only very rarely and many wrongs would go unredressed. I think I was not mistaken; and my view may be found to have proved right in the light of experience.

Temple Committees.

For several years now, there have been no committees in about 20 districts. It cannot be said that temples therein have suffered for their absence. The reason is obvious. Politics, has less interfered with them, than where committees are functioning. There, the inevitable faction spirit prevails and even the handds of the Board are often stayed. When the Government was directly managing temples, there were no temple committees. They were created by the Act of 1863 to take the place of Government. But when a salaried Central Board was created there was no longer need for this buffer between it and the trustees. I have laid stress on this point in my review of 1925 referred to above. The Board and Government have since realised it, and that apparently accounts for Government's omission, in spite of the imperative provisions of the Endowment Act, to constitute committees for the Districts without them. It might have been inconvenient too for a party government and its adherents to risk elections for the committees as laid down by the law; nevertheless it has to be said that there is no regret in any quarter for the paucity of these bodies. In any event, either the Board or the Committee is a superfluity in the presence of the one or the other of them.

As with the Board, with the Committee also, there is the handicap of finance. It meets but once a month and appoints trustees to temples. It can do no more. It has not got adequate

staff to efficiently superintend the affairs of the temple under it, which range from about 250 to 1000 and more in number.

The Alternative Proposal.

Reversion to the state of affairs before the Panagal Act is out of question and is liked by no one. The setting up of an independent machinery at Madras efficient and adequate to control and supervise the Religious Endowments all over the Presidency, is possible only at a prohibitive cost. It is not proper to tax temples for that purpose; and there is a limit even to such taxation. A careful perusal of the Board's annual demands at present, will show that with such income even if fully realised during the year, it is very difficult to balance even the present budget. The large collection of contributions now by coercive process through the Revenue department represents the arrears of several past years. It will soon be over.

Further it may not be practical politics to expect provision for the required money therefor from Provincial Revenues.

Nevertheless, government cannot escape its responsibility with reference to temple trusts. Provincial autonomy is come and government is no longer merely "Christian". It must devise a means for discharging its duties in this direction, which will not involve much cost and which would at the same time be fairly efficient.

The best course for it seems to be, to revert to direct management of the Religious Endowments through the Revenue department, as in the early days of the British Government in India, with such changes in policy and action as may be found necessary to suit the present conditions.

The revenue department is amply manned from village officers at the bottom to the Revenue Board, at the top; and it would be very easy to control the secular administration of temples through them. Responsible Managers may be appointed for the immediate management of temples and they may be paid from their funds. For temples without sufficient income, other arrangements may be made. Unlike committees and trustees, such managers will be subject to official discipline and rules of conduct. Temples will become free from sectarian quarrels and litigations would come under direct state control. The influence of politics on them will become minimised.

To cope with the slight extra work that may fall upon the Taluq office or the collectorate on this account, an additional clerk may be appointed to each of them and paid, if necessary, by a trifling levy on the temple incomes, though the proper course

would be for the government to bear such charges. To keep government in touch with the administration of the temples, an officer like the Inspector of Municipalities and Panchayats may be appointed, with some necessary establishment. The present staff of the Endowment Board's office may be absorbed into these services with advantage.

Such a system prevails in Mysore.. An Assistant Secretary to government is the only additional officer employed for the muzrai (Devasthanam) department. The ordinary Revenue Staff control the affairs of temples. The temples there are said to be never involved in litigations of the sort we find here; and even rents of lands are said to be recovered from the defaulters like arrears of Revenue.

If, however, the Board is continued, it is necessary to confine its activities to administration only, as defined in S. 18 of the Endowments Act. Its members should be men of mature experience, having reverence for and abiding faith and knowledge in the religion of temples and outlooks for their being conducted in an ideal manner. Provisions should be made to ensure that the spirit of faction, communal or otherwise which disfigures other public bodies, has no entrance into it in any manner.

Moreover, when the Board is made a purely administrative body there is no meaning in centralising it at Madras. Territorial divisions of the Presidency should be fixed as in the other departments of the State. The Commissioner for each division should have his office within it and be responsible for its administration. Under such arrangement, there is no need for any "Committee" of Commissioners to transact any business.

HONOURS AND SECTARIAN CLAIMS.

In a dispute for first honours between rival Matadhipathis the Madras High Court, both in its original and appellate sides held recently that a claim for honours was not a civil right and so no action lay.[1] Nothing daunted, one of them went back to the Endowment Board; and in spite of conflicting orders from different committees therein, got an order from one of them in his favour. Against this, a writ proceedings was taken in the High Court by his rival, but without success. We read in the papers that during a festival in the temple concerned some months ago, both the contending swamiars were prevented from visiting the temple by the Superintendent of Police!

1. Appeal against C.S. No. 306 of 1927. *Sri Vanamamalai Jeeyar Swamigal* v. *The Board of Commissioners for the H.R.E.*, (1934) 69 M.L.J. 14 and *Sri Emberumanar Jeer Swamigal* v. *The Board of Commissioners for Hindu Religious Endowments*, (1936) 71 M.L.J. 588.

This is enough to illustrate the hideous length to which scramblers for honours would go and the risks and compromises to which they would expose themselves, in their eagerness to get the better of their rivals whether of their own sect (as in this case) or of the opposite persuasion. The sectarian and factious quarrels which have grown round Vishnu temples for over a century past, and which have exposed temples and religion to public contempt and ridicule have no basis in the Agamas and Sastras. They are comparatively of recent origin. The peculiar situation of the foreign government and its Courts on the one hand, and fanaticism and vanity on the other, have afforded all facilities to them. It would be useful to obtain a detailed return, from Courts all over the Presidency from the High Court downwards, of the sectarian and factious suits and proceedings pending before them, giving also particulars of their nature, their period of pendency, their present stage and so on. The time and money wasted on such enterprises, are really stupendous!

A true reform of the Endowment Law must devise effective means for eradicating this evil to the very root. Special temple honours as such should go; and there should be no recognition of any rights for sects as such (barring, of course, the hereditary rights of individual service-holders). If the Congress Government could not accomplish this result no other kind of Government can do it! The Trustees should not be permitted to spend temple funds in litigations concerning sectarian disputes or disputes relating to honours—at any rate without a special order from the Court trying the case. This would provide the most effective check against such litigation.

Maths.

Leaving aside certain specific endowments and temples which have come under the control of maths as *trustees,* the properties belonging to the math as such are neither *public* nor *endowments.* A perusal of the title deeds will show that they are invariably gifts by disciples to the heads of maths "to enable them to get on with their pujah, etc." Some of the matadhipathis have accumulated large property. This should not make any difference regarding their rights to it. Men with western education and thoughts are accustomed to compare matadhipathis with the Christian clergymen, who are, from the top-most of them, *employed* on salary to do certain services. The matadhipathis on the other hand is a *teacher* to whom the disciple resorts for learning and gives *guru dakshina* to show his gratitude for the *upadesam* he gets—never with a view to impress such gifts with

the incidents of trust! From these accumulations and savings, the matadhipathis have also purchased other properties. They are the *proprietors* of such property, and a long course of decisions (inclusive of those of the Privy Council) have confirmed this view.

The Committees appointed from time to time by government to draft endowment bills have considered carefully the question of the desirability of including *maths* within religious endowments, and the idea was finally abandoned by the Muthuswamy Iyer Committee. In any event, it was thought best to leave the welfare of each math in the hands of its votaries, and that it was not desirable to place them under the control of persons or bodies who may not show that deference to those spiritual teachers, which they may feel, is due to them. The Rajah of Panagal was therefore wrong in including *maths* within the Act. The recent Math Bill which was thrown out by the Legislative Council, went even to the ridiculous length of investing the Endowment Board, with powers to remove Swamiars and appoint interim Swamiars too!

The safest course would be to undertake Legislation, if at all, for individual maths, when there is real and large demand for the same from those having interest therein and in accordance with the peculiar conditions of such math and the desire of its head and its votaries. Maths should be excluded from the general Endowments Law.

THE TIRUPATHI DEVASTHANAM ACT.

The Endowment Board exercises under this Act, a nominal control over the Tirupathi Devasthanam; and for this it gets from the latter an annual contribution of Rs. 15,000 or so. The Tirupathi Commissioner draws the same salary as the President of the Endowment Board and starts on a higher pay than his. He is assisted by a Committee whose members are not inferior to those of the Board and who come from all over the Presidency and draw handsome travelling allowance and batta. While so, it looks anomalous that, in spite of the Tirupathi Act which is self-contained, that the Devasthanam should still be placed under the Endowment Board. The Commissioner of Police at Madras is not subordinate to the Inspector-General of Police; nor is the Presidency Postmaster, under the Postmaster-General of Madras!

Apart from this, the public naturally ask what advantage has the temple derived from the new regime for its working

there four years and over! The electric installation, the waterworks, the repairs to the steps leading up the hills, the Devasthanam office with its treasury arrangements, the spacious and convenient chatram near the Tirupathi Railway Station, and the other amenities to pilgrims, are all due to the Mahant who was managing the temple for about half a century.

The Tirupathi Act offered encouragement for the Koti Reddi Bill which provides for notification of temples and appointing executive officers to them.

The actual expenditure on the temples on the hill and the plains do not appear to exceed a lakh or a lakh and a half a year; let it be even two. But the annual income of the temple is between Rs. 12 to 15 lakhs! It is often contended that any surplus in government revenue must go towards reduction in the taxation burden. Will not the same reasoning apply to the Tirupathi Temple? Why should not the huge surpluses be utilised for the reduction of unconscionable fees levied on worshippers for the several *sevas* of the day? After all temples exist only for worshippers; and the *agamas* say that the puja therein is for them (*parartha*). While so, why are their natural rights to worship and witness the sevas penalised and obstructed? The *Tomala seva, e.g.*, is the main puja of the day which worshippers have a right to witness as in other temples freely; and Tirupathi levies about Rs. 14 for it. Pilgrims who take vows to put money into the Hundi utilise the sums for the *sevas;* but poor people who cannot command money go without them; and they are not even sheltered from the sun and rains while waiting for the *charity* seva, the entire front mantapam being occupied by the temple office! It is stated that the doles of food which the mahant used to give to indigent beggars, have been since stopped.

The affairs of Tirupathi also require thorough examination.

PROPOSALS SUMMARISED.

1. (*a*) Government itself may resume the superintendence of temples, as per S. 18 of the Hindu Religious Endowments Act through its Revenue Department.

(*b*) To keep Government in touch with the administration of temples an office like that of the Inspector of Municipalities and Panchayats or Registrar of Co-operative Societies may be organised with the necessary details.

Or

(*c*) The Endowment Board may be retained as a purely administrative body; in which event, it is not necessary to con-

centrate it at Madras. The Presidency may be divided into divisions and a Commissioner be placed in charge of that area and made responsible for the proper administration of the temples therein.

(*d*) Temple committees are not necessary, as they cannot function efficiently.

2. The provisions for the settlement of schemes for temples may be deleted, the Act itself providing for the periodical appointment of trustees and its manner, the maintenance of accounts and their audit, the preparation of budgets, the appointment of managers or treasurer and for doing other acts usually directed to be performed under schemes. Power may be given to the authorities concerned to retain such other features of schemes already settled (if they are found beneficial to the temples) as are not covered by the provisions of the Act.

3. Judicial functions now performed by the Board such as the *cy-pres* application of endowments or surplus (S. 67); sanctioning alienation of properties (S. 76), allocation of trusts of a mixed character to religious and non-religious purposes (S. 77), etc., may be restored back to Courts.

4. The distinction of 'excepted' and 'non-excepted' temples be abolished. But the rights of the hereditary trustees in the hitherto 'excepted' temples may be safeguarded like those of the hereditary trustees of non-excepted temples.

5. To temples having sufficient income (*e.g.*, having an annual income of Rs. 3,000 and more), paid trustees or managers may be appointed in the place of honorary trustees, from whom security may be taken and who will be subject to official discipline and rules of conduct.

In other cases honorary trustees may be appointed. A single responsible trustee to a temple proves to be more expedient in its interests; the more so, as the term of office of the trustee is now only five years. A larger number would be required only if party and sectarian interests are sought to be provided for. It is, however, necessary that a trustee or manager should be strictly enjoined not to involve the temple or its funds in sectarian or party quarrels. Quarrels between trustees are the cause of most trouble in temples.

6. 'Honours' and sectarian claims *as such* should be abolished. The rights, however, of individual hereditary service-holders only, to their accustomed honours as part of their remuneration, may remain. Barring this, there should be neither a

recognition of exclusive rights to any sect or individual for honours, general or special, nor a disability to worship or to recite the Vedas, Sanskrit or Tamil, as mere worshippers, so long as they are not prevented from doing so by reason of religion. Just as individuals entitled to worship in temples are not prevented from doing so on account of their caste marks, so the minor deities also attached to a temple should not have any disability for worshipping the main deity, by reason of its caste mark.

7. Maths should be totally excluded from the scope of the Act. Special legislation for any individual math may be undertaken if there is a sufficiently large and real demand from the interests concerned.

8. Temples should not be taxed for the superintendence of their administration. In any event, such tax should be a minimum on large incomes and none on smaller ones. Temples with the income of Rs. 300 and below for a year may be left out of the scope of the Act, as it is impossible to do anything for them from above.

9. The audit of the temple accounts may be performed by the audit department of the Government as in the case of Local Boards and Municipalities. There is no official check on the audit by private agency, except perhaps when an account goes to Court.

Conclusion.

The above brief outline of some of the features of the Endowment Act and its working, would make out a clear case for immediate reform. The most urgent thing to be done is the repealing of Chapter VI-A (Notified Temples) of the Endowments Act, and the restoration of the temple schemes which have become inoperative on account of "Notifications". Although Government has, for the time being, asked the Endowment Board to stop all notification proceedings, the legal method is only by way of an urgent legislation. This should be undertaken at once.

The Congress Government is expected to take up the matter of overhauling the Endowment Law in a spirit of sympathy and reverence, with due regard for the long-cherished sentiments and religious faith of the vast community of the Hindu people.

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Hindu Religious Endowments, Madras.

SUMMARY OF ENGLISH CASES.

In re COUSEN'S WILL TRUSTS: WRIGHT *v.* KILLICK, (1937) 1 Ch. 381.

Will—Construction—Legacy to A*—In the event of* A's *death before testator to* B*—No further provision after* B*—*A *and* B *both predeceasing testator—Effect of—Lapses into testator's estate.*

The testator *C* who died in 1919, by his will dated 1907, bequeathed all the residue remaining after other bequests to his wife. After the death of his wife, half the residuary trust fund was to be held upon trust, "for all the children of my late uncle *S.M.C.* who shall be living at my decease in equal shares . . . provided always . . . that if any child of . . . . *S.M.C.* or of my late aunt *M.A.* shall have died in my lifetime whether before or after the date of this my will leaving issue living at my death, the share in the residuary trust funds which such child would have taken if he or she had survived me shall be held in trust for his or her personal representatives as part of his or her personal estate". Testator's wife died in 1930. No child of *S.M.C.* or *M.A.* was living at the death of the testator. *C.S.C.*, one child of *S.M.C.*, married one *A* and died in the lifetime of the testator, leaving a daughter *W* living at his death. *A* survived his wife and became her legal personal representative and was beneficially entitled to the whole of her residuary estate. *W* was the next-of-kin of *C.S.C.* at the date of the death of the testator and was entitled for her life to the income of the residuary estate of *A* under his will. *W* survived the testator. The question was if there was a lapse of the half share of the residue given by *C* to *S.M.C.'s* children.

Held, that by providing that if the person or persons who would have taken directly under the will (here Mrs. *A*.) predeceased him, the benefit which she would have taken is to go to her legal personal representative, as part of his or her personal estate, the testator has avoided the rule of lapse which says that on the legatee's death before the testator the legatee is not to take any benefit under the will but that it falls into residue. But the last words mean that it was a gift to Mrs. *A* or in the events which have happened, to the person who became entitled on Mrs. *A's* death to her estate, that was her husband *A*. But *A* did not survive the testator *C* and since there is nothing in *C's* will which provides against the lapse which must result if the person who is substituted for Mrs. *A* as legatee predeceases the testator, that portion of the estate of *C* has not been effectively disposed of and falls into the testator's estate.

In re CUTHBERT COOPER AND SONS, LIMITED, (1937) 1 Ch. 392.

Company—Private Company—Winding up—Transfer of shares—Transfer by death of shareholder—Director's power to

refuse registration of transfer—Refusal by to register deceased shareholder's executors—If ground for winding up—Companies Act, 1929, *S.* 168.

A ompany was registered as a private company, with a capital of £10,000 of 1*l.* shares each, of which one *CC* held 5,000 shares and his two sons 2,500 shares each. The first directors were *CC* and his two sons and continued to be so till 1930 when *CC* died. *CC* by his will appointed his three younger sons as executors and bequeathed his 5,000 shares to them. They applied to be registered as shareholders but the elder sons (directors) refused to register them as such. The younger sons were in the company's employment and they were dismissed from it also. The articles provided that "the directors in their absolute uncontrollable discretion may refuse to register any transfer of shares . . . without assigning any reason therefor . . ." and that the directors shall have the same power of refusing to register a transfer even by death, bankruptcy, etc., of a shareholder. The younger sons were refused even a copy of a balance sheet. The articles gave such executors of legal representatives only some limited rights, like receiving dividends and rights in a winding up to such a return as the deceased would have been entitled to. The younger sons therefore applied for a winding up order.

Held, that the principles which should guide the Court are those which influence the Court in determining whether or not a partnership shall be wound up. But the legal rights of the parties are to be determined by the articles, which is the bargain into which they have entered. Even treating these executors as contributories within the meaning of S. 168, Companies Act, 1929, as held in In re *Norwich Yarn Co.,* (1850) 12 Beav. 366, yet there were not sufficient grounds to order a winding up.

BROOK'S WHARF AND BULL WHARF, LIMITED *v.* GOODMAN BROTHERS, (1937) 1 K.B. 534=106 L.J.K.B. 437.

Contract—Bailment—Firm of furriers—Import of goods from Russia—Goods stored in bonded warehouse of plaintiffs—Goods stolen there—No negligence on the part of warehouseman—Customs duties collected from warehouseman—Defendants, if liable to repay it.

The defendants, a firm of furriers, imported from Russia a consignment of squirrel skins. Some of those goods were stored in the plaintiff's bonded warehouse but while there, they were stolen. It was not proved that they were stolen by the negligence of the warehouse owners. The plaintiffs were compelled to pay the customs duties on the goods out of their own moneys as the defendants refused to pay for it. The plaintiffs thereupon claimed the sum that they so paid on the ground that it was a primary liability

of the defendants. The defendants counterclaimed for the value of the goods on the ground that they were stolen by reason of the negligence of the warehouseman. *Held,* that if the plaintiffs show that they took all reasonable and proper care of the goods, the mere fact that they were, notwithstanding, stolen is not sufficient any longer to make them liable for negligence. The duty of the plaintiffs cannot be put higher than that they must do what is reasonable. They are not insurers and as they had established that they took such precautions as reasonable and prudent care demanded, they were not liable on the counter-claim. As for their claim to duties:—The defendants clearly were, by the general law, liable as importers of the goods, to the payment of these duties. The duties are due on importation from the importer and remain due from the importer until the goods have been duly discharged from the custom's custody. The duties demanded of the warehouseman under Ss. 85 and 87 refer to the duties due from the importers. The plaintiff has been compelled by law to pay, or being compellable by law, has paid money which the defendant was liable to pay ultimately, so that the latter obtains the benefit of the payment by the discharge of his liability. Under these circumstances the defendant becomes indebted to the plaintiff in the amount and is therefore liable.

SYMES AND JAYWICK ASSOCIATED PROPERTIES, LIMITED *v.* ESSEX RIVERS CATCHMENT BOARD, (1937) 1 K.B. 548=106 L.J. K.B. 279.

Easement—Sea wall—Wall to prevent the incursion of the sea into the land—Claim by owners of land on seaward side of the sea wall to drain on to the landside—If available.

Sea walls owe their origin to the prerogative of the Crown to protect the realm against the incursion of sea water, just as a wall of a port is erected to prevent the attack of an enemy. Nobody can therefore acquire any right to interfere with a sea wall so as to prevent it operating as intended by the Crown when it was built. Whether a gap is made in the sea wall or a hole is made under the sea wall with the object of letting sea water into the lands which lie behind the sea wall, those who make such a gap or hole are committing an illegal act; they can acquire no right to let sea water into the lands behind the sea wall, such a right being absolutely inconsistent with the object of the Crown in causing the sea wall to be built. It is impossible to assume that the Crown would grant any right to any one to interfere with the defences raised by the Crown against the incursion of the sea water.

The mere fact that by the action of the sea the land on the seaward side of the sea wall had become higher land than the land on the landward side of the wall could not possibly give them any right to drain their sea water through the wall.

REED *v.* CATTERMOLE (INSPECTOR OF TAXES), (1937) 1 K.B. 613=106 L.J.K.B. 407.

Income-tax—Minister of Methodist Church—Appointment of as minister of a circuit of 9 churches—Compulsory residence as a requirement of the office—Payment of rates on the house by employers—If occupant also liable under Sch. E to tax as on occupation.

The appellant was appointed a minister of a circuit consisting of 9 churches. The appointment required that he should go and live at a particular manse in order to more conveniently discharge his duties. Though it was too big for him, he was not allowed to sublet the manse nor to make any profit out of his occupation. The cost of repairs, furnishing, etc., are to be borne by the church. The Sch. A tax, the rates and water rate were defrayed by the church.

Held, that the minister is not liable to tax under Sch. E in respect of his occupation of the manse. The minister's possession and enjoyment of the premises are for the benefit of the church and his occupation is their occupation and therefore the church alone is properly assessable as occupier both for income-tax and for purposes of rating.

WYATT *v.* GUILDHALL INSURANCE COMPANY, LIMITED, (1937) 1 K.B. 653=106 L.J.K.B. 421.

Insurance—Motor insurance—Policy for user as for social domestic and pleasure purposes excluding hiring—Insured carrying persons for money on an isolated occasion—If risk covered by the policy—Injury to passenger on that occasion.

One *W* owned a motor car which was insured with the defendants under the terms of a policy and certificate of insurance. The material words of the policy were: "Description of use—Use for social domestic and pleasure purposes and use by the insured in person in connection with his business or profession as stated in the schedule hereto, excluding use for hiring." The car was always used only for pleasure but on one day when himself on his way to London, he picked up two passengers, the plaintiff and another, for money. This was an isolated transaction. That day the motor car came into collision with a motor lorry, whereby the plaintiff sustained injury. The plaintiff recovered judgment against *W* for damages. *W* claimed to be entitled to indemnity from the defendant company in respect of the collision including the claim of the plaintiff. But the company denied liability on the ground that it was not covered by the policy.

Held, that the policy confines the indemnity to use for social domestic and pleasure purposes. The use of the car for driving

two persons to London for a consideration takes it out of "use for social domestic and pleasure purposes".

MILLENSTED *v.* GROSVENOR HOUSE (PARK LANE), LIMITED, (1937) 1 K.B. 717=106 L.J.K.B. 221.

Practice—Rules of Supreme Court, O. 22 r. 6—Court pronouncing orally judgment—Judgment not drawn up—Power to vary —Effect of O. 22, r. 6.

The plaintiff brought the suit for damages for injuries suffered by her on account of the negligence of a servant of the defendant company. Hilbery, J., tried it without a jury and by an oral judgment gave £50 as damages. The defendant's counsel wanted that costs should be awarded on the County Court scale but as the amount of damages was £50 it of necessity carried costs at the High Court scale. After the judgment, the defendant's counsel informed the judge that £20 had been paid into Court. The learned judge refused costs on High Court scale and directed costs only on County Court scale. The next day another application for argument on costs was made to the judge and on that he held that £50 was excessive and by a formal judgment gave only £35 with costs on County Court scale. It was admitted in argument that before O. 22, r. 6 of the Rules of Supreme Court the judge could have amended, inasmuch as by that time the order had not been drawn up and perfected.

O. 22, r. 6 provides:—

"Except in an action to which a defence of tender before action is pleaded or in which a plea under the Libel Acts, 1843 and 1845, has been filed, no statement of the fact that money has been paid into Court under the preceding rules of this Order shall be inserted in the pleadings and no communication of that fact shall at the trial of any action be made to the judge or jury until all questions of liability and amount of debt or damages have been decided, but the judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into Court and the amount of such payment."

It was contended that the effect of the rule is to disqualify the judge from acting upon his right to alter his judgment before it has been drawn up. The fact that the £20 had been paid into Court was not known to the judge.

Held, that the rule is directory and not compulsive. A judge in his discretion, when such a matter was mentioned to him or the jury, if he were of opinion that the statement as to payment in Court could not reasonably be calculated to cause any miscarriage, would be entitled, notwithstanding the mention to allow the case to proceed. Further the right view is that there is no effective judgment until it is drawn up and up to that time the judge is not

functus officio. Such a basic notion cannot be upset by the mere application of an inference derived from the inconvenience of applying it in the circumstances contemplated by a particular rule.

FARMER *v.* HYDE, (1937) 1 K.B. 728=106 L.J.K.B. 292.

Libel—Law of Libel Amendment Act, 1883, *S.* 3—*Report of proceedings in Court—How far privileged.*

During the hearing of a libel action the counsel for the plaintiff criticised the behaviour of a Mr. *D* very severely in his opening speech, and the plaintiff also in his evidence commented adversely upon Mr. *D's* behaviour. Thereupon Mr. *D* made an application to the Judge in these words "May I make an application? I am the rector of *S* and I want to contradict the many lies that have been told in this Court." This was reported to in the newspapers of the defendants. The plaintiff filed this suit against the proprietors of the newspapers for libel in that they reported this matter defamatory of him. It was admitted to be a fair and accurate report.

Held, that the application which Mr. *D* made to the Court was made in the course of the proceedings publicly heard before Court exercising judicial authority. The reports were fair and accurate reports of those proceedings, and consequently it was protected by S. 3 of the Law of Libel Amendment Act, 1883, which provides that "a fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged."

KING *v.* BULL, (1937) 1 K.B. 810=106 L.J.K.B. 430.

Wireless Telegraphy Act, 1934, *S.* 1, *sub-S.* (3)—*Connecting a loud speaker to a central wireless receiver—If working a wireless apparatus.*

The respondent was a tenant and occupier of a self-contained flat being one of a block of similar flats owned by certain landlords. The landlords installed in the said block two wireless receiving sets for each of which they paid 10sh. licence fee. Each set was fitted with an amplifier connected by wires to a corresponding socket installed in each of the flats including that of the respondent. The respondent installed a loud speaker on his flat fitted with a wire and a plug and received broadcast programmes through it, but did not obtain a wireless licence. The operation and tuning of the two sets were under the control of the landlords, and they were switched off by them at 11 P.M. He was tried for having unlawfully worked apparatus of wireless telegraphy without a licence. It was contended that the loud speaker was not apparatus but was an instrument,

that the act of placing the plug into the socket did not constitute working of the loud speaker and that the tuning and switching constituted the working.

Held, that the respondent was in his own flat and without a licence seeking to have the advantage of the transmission of a wireless message from somewhere. He was doing what he did to work the wireless apparatus. He was therefore "working any apparatus for wireless telegraphy" and was guilty of that offence under S. 1, sub-S. (3) of the Wireless Telegraphy Act, 1934.

BYRNE *v.* DEANE, (1937) 1 K.B. 818=106 L.J.K.B. 538.

Defamation—Golf club—Automatic gambling machines therein—Report to police by a member—Removal by police of the machines—Notice put up on club wall, suggesting that some member had reported, etc.—Owners of club not removing the notice—Whether the words capable of a defamatory meaning—If owners liable for defamation by not taking down the notice from out of the wall.

One Mr. Byrne (the plaintiff) was a member of a golf club and the defendants Mr. *D* and his wife Mrs. *D* were the proprietors and sole directors of the club and the wife was also its secretary. Certain automatic gambling machines had been kept upon the club premises from 1932 for the use of the members. Some one gave information to the police about this machine which led to the police directing their removal and they were removed. The next day some one put up on the wall of the club a typed paper with the following verse written thereon:—

"For many years upon this spot
You heard the sound of a merry bell
Those who were rash and those who were not
Lost and made a spot of cash
But he who gave the game away
May he byrnn in hell and rue the day."

The word 'byrnn' was blacked out and the word 'burn' substituted for it in the original but in the carbon copy underneath it the word 'byrnn' remained. Rule 12 of the club's rules provided that no notice or placard, written or printed shall be posted in the club's premises without the consent of the secretary. The secretary admitted having seen the notice but stated that she did not remove it as she did not think it harmful but only thought that one member of the club was poking fun at another. The plaintiff brought the action for libel alleging that Mr. *D* and Mrs. *D* had published or caused to be published the words concerning him. Hilbery, J., held that the words were defamatory and that as the defendants had complete control of the walls and could have taken down the paper after they had seen it, the writing could only have been done with their approval and awarded nominal damages.

On appeal, *Held* by Slesser and Greene, L.JJ., that the words were not defamatory as there is nothing defamatory in saying that

one has reported certain acts, wrongful in law, to the police. The criterion is what a good and worthy subject of the King would think of some person of whom it had been said that he had put the law into motion against wrong doers.

Per Greene, L.J. The statement is a statement that the plaintiff who gave the game away was guilty of disloyalty to his fellow members of the club. Whether it was justified or not is quite another matter. The two proprietors of this establishment by allowing the defamatory statement to rest upon the wall and not to remove it, with the knowledge that they must have had that by not removing it it would be read by people to whom it would convey such meaning as it had, were taking part in the publication of it.

WHITE OTHERWISE BENNETT *v.* WHITE, (1937) P. 111=106 L.J.P. 49.

Marriage—Nullity—Bigamy—A form of marriage celebrated in a foreign country—Husband then having a wife living—Wife domiciled resident in England—Husband foreign domicile—Notice served on husband—Non-appearance of—Court, if has jurisdiction to decree nullity.

The petitioner *B* went through a ceremony of marriage with *W* at Melbourne, Victoria in 1926. In 1908 the respondent *W* had been married to one *F* at Malta and the marriage was still subsisting. The marriage of the petitioner *B* and respondent *W* had not been consummated. *B* was domiciled and resident in England, while *W* was domiciled and resident in Australia or Malta. *B* filed the petition for a declaration that the marriage was null and void. Notice was served on *W* who merely signed acceptance of service and a formal statement that he was a married man but did not appear.

Held, that in England in cases where a dissolution of marriage is sought the domicile of the husband is the cardinal and controlling fact, and that the Court having jurisdiction in the country of that domicile has sole jurisdiction over the claim for dissolution of the marriage. This has been applied when nullity was sought for on the ground that the respondent was incapable of consummating it. In this case the petitioner never acquired the domicile of the respondent, either in law or in fact, but is domiciled and resident here. The respondent has never resided here. It is not, in those circumstances necessary for *B* to proceed to whatever part of the world the respondent may happen to reside in, in order to get her status established by a decree of nullity. Though the respondent has by his conduct and admission so acted as to justify the Court in exercising jurisdiction, there was no conflict of law between different jurisdictions, because the ceremony was bigamous, and therefore by the law of every Christian community there was never any matrimonial status common to the petitioner and the respondent.

JOTTINGS AND CUTTINGS.

The Portrait of T. Rangachari, Dewan Bahadur.

The Hon. Sir M. Venkatasubba Rao, *Kt.*, in unveiling the Portrait of Dewan Bahadur T. Rangachariar in the Advocates' Association Hall on 27th August last, said:—

The portraits that adorn these walls are a striking testimony to the fidelity and devotion of the members of the Advocates' Association to those, who in their day, climbed the heights of the legal profession. To-day, another portrait is going to be added and that will serve to keep bright the fame of a distinguished lawyer. Mr. Rangachari was one of a galaxy of illustrious lawyers, who are among the proudest memories of the Association. His matchless eloquence, his capacity to capture the mind and hold the attention, are in my opinion, the distinguishing traits which gave Mr. Rangachari the commanding position that he achieved. Of him, it might be said, that he possessed a silver tongue, which gained him the admiration of the Bar and the respect of the Bench.

Some of his eminent contemporaries have passed to silence, and every life, it is the law of nature, must have its close; but over Mr. Rangachari, though alive, a silence has already fallen, and it is most distressing and sad to think, that from the lips of the man, whose glory was his eloquence, comes no word. He was stricken by a malady some five years ago, from which he has not yet recovered. May the homage we have met here to pay him this evening soothe in some measure his hours of pain and suffering, is my ardent wish, as I am sure, is the wish of all of you assembled here.

There are many here who, I doubt not, can claim greater intimacy with Mr. Rangachari than myself; but of his achievement at the Bar I feel I can speak with some authority. His active forensic life covered a period of about twelve years of my judgeship. He had an amazing power of mastering the facts of his case and presenting them with accuracy and lucidity. He spoke with unrivalled knowledge of every detail and brought to bear on his task a thoroughness which was rarely surpassed. He went on from argument to argument, explaining, illustrating and expatiating and never did he weary the Judge. In a voice that was captivating he addressed the Court, but there was a masculine strength which made his argument irresistible. At times he struck blow after blow with wonderful vigour till he smashed his opponent's case. There was, when occasion demanded it, a moral fervour as it were, in the speeches which he made. I remember a second appeal which I heard sitting with Mr. Justice Ramesam, involving intricate questions of water rights. For understanding the facts about half a dozen maps had to be referred to and closely studied, but Mr. Rangachari had an amazing grasp of every detail and with his bewitching eloquence he made even that extremely dry case interesting. He has set an ideal

which, I believe, may with advantage be followed both by the junior and the senior sections of the Bar. In the first place, he was very thorough; his preparation left nothing to be desired. He was not impatient of drudgery. These qualities enabled him to be exact in statement and lucid in exposition. In addition to these, he possessed the natural gift of eloquence. In marshalling the facts he was not only lucid but logical, so that to listen to him was a pleasure. He had another great quality, the power of selection so necessary to powerful and convincing advocacy. It is a common failing at the Bar to stress what is non-essential and slide over what is essential. This mistake Mr. Rangachari would never commit, but would go straight to the heart of the question that mattered. Even at the height of his glory, he read his briefs thoroughly, unlike many a leader who rests on his laurels. No man ought to remain at the Bar, or for the matter of that on the Bench, after the work has ceased to interest him. In the case of Mr. Rangachari, I do not think any junior that engaged him had ever reason to complain that he shirked his work. Indeed from the point of view of the Judges, he was a most painstaking and thorough Advocate, who did his work conscientiously and argued his cases with zeal and energy. He was always self-possessed and was most genial and affable. He was forceful and vigorous, but always respectful. Eloquence, as Lord Morley says somewhere, is more than words; speech is not eloquence, eloquence is character, conviction, sincerity, purpose, service and fitness. Mr. Rangachari's eloquence was of this type and it is no wonder that when to this was added his intellectual acumen, his advocacy became irresistible.

On his achievements in the sphere of public work I shall not dwell, as they are not matters of which I can speak from personal knowledge. But there can be no doubt that he threw himself into his work, whatever its nature was, with great energy, and discharged his public duties faithfully and efficiently. His career has been a distinguished one and of the many eminent men that the profession has produced, he is undoubtedly one of the greatest.

I deem it both a privilege and an honour to have been asked to participate in this function and I unveil his portrait with great pleasure.

Lord Blanesburgh's Retirement.—There have been interesting and important judicial changes in the past week, due to the retirement of Lord Blanesburgh through illhealth. Lord Wright, who succeeded the late Lord Hanworth as Master of the Rolls in October, 1935, now returns to the House of Lords as a Lord of Appeal in the place of Lord Blanesburgh. Lord Justice Greene becomes Master of the Rolls, and Mr. Justice Mackinnon leaves the King's Bench Division for the Court of Appeal. Lord Blanesburgh's retirement will be much regretted, especially on account of its cause. It

closes a very distinguished career at the Bar, on the Bench, and in the House of Lords and Judicial Committee. He is still remembered as a forceful and able advocate both at the Junior Bar and after he had taken silk. He did useful work as a Judge of the Chancery Division, and both in the Court of Appeal and in the House of Lords he delivered many judgments marked by great learning and cogent reasoning. But outside his judicial work he rendered important service during and after the war with a view to ameliorating the conditions which the war produced. In 1918 he was Chairman of the Government Committee on the Treatment by the Enemy of British Prisoners of War, and in the Report published in March of that year, and signed by him on behalf of the Committee, it was recorded that, on the evidence, the Committee failed to find a trace even of lip service to the obligations solemnly undertaken by the German Government in time of peace for regulating their conduct in time of war. Subsequently Lord Blanesburgh gave his help in mitigating the hardships caused to Germans here and abroad by the handing over of their property to the Public Trustee.—*L.J.*, 1937, *p.* 297.

The New Master of the Rolls.—The return of Lord Wright to the House of Lords gives Lord Blanesburgh a distinguished successor. We need not speak of the work he has done in the Court of Appeal as Master of the Rolls. That, it turns out, has been only an interlude in his work in the final Tribunal to which he was first appointed direct from the King's Bench Division in 1932. It will be remembered that he was a member of Lord Hanworth's business of Courts Committee, and in a Memorandum appended to the Second Interim Report of the Committee he suggested a more thorough scheme of Circuit reform than the Committee had recommended. Since then further progress has been stopped by the Report of the King's Bench Commission. The appointment of Sir Wilfred Greene as Master of the Rolls follows quickly upon his appointment as a Lord Justice straight from the Bar in October, 1935. It brings back that office, after a lengthened severance, to its rightful sphere of Equity, and bestows it on a very distinguished equity lawyer. Sir Wilfrid's greatest work outside the Bar was his Chairmanship of the Companies Committee. Upon their Report the Companies Act, 1929, was based. He also in little over a month performed, in concert with Mr. Justice Clauson and Lord Plender, the formidable task of fixing at 66,450,000*l.* the "global" value of the coal royalties, but the task seems to have been facilitated by the total royalty income being agreed, leaving only the number of years' purchase to be fixed, namely, at 15 years. The appointment of Mr. Justice MacKinnon as a Lord Justice is a fitting sequel to the work he has done as a Judge of the King's Bench Division; it brings into the Court of Appeal a commercial lawyer, trained by long association with the

late Lord Justice Scrutton; and shows, as Lord Hewart again reminds us, that Law and Literature are not to be divorced. But who is the "perhaps first-rate poet" who, Lord Hewart said in his St. George's Day speech last week, has died in the last 80 years? And who is the first-rate Judge, without a "perhaps"?—*L.J.*, 1937, *p.* 297.

Burma Judicial Changes.—A practising barrister, Mr. R. T. Sharpe, has been appointed to fill the vacancy in the Rangoon High Court caused by the promotion of Mr. Justice A. H. L. Leach to be Chief Justice of the High Court of Madras, a promotion which, it is officially announced, will take effect as from July, 2.

The new C. J. and the new Puisne were practising members of the Bar before their elevation to the Bench. It is 30 years since Alfred Henry Lionel Leach was called by Gray's Inn. His appointment as Judge of the High Court of Rangoon was on February 15, 1933.

Mr. Reginald Taafe is of the South-Eastern Circuit, his chambers at 1, King's Bench Walk. He also is a Gray's Inn man, called, post-war, in the same term, almost exactly 17 years ago.—*L.J.*, 1937, *p.* 314.

Mr. Jayakar's Appointment.—Mr. Mukund Ramrao Jayakar's appointment as one of the Judges of the Federal Court is described by an Indian legal correspondent as a "pleasant surprise to many in India". From which it would appear that while he was not included by the prophets in their list of "probables", it is recognised that the appointment is a good one and that Mr. Jayakar's selection for this very exalted judicial post is in accordance with his merits.

"In India", my correspondent writes, "Mr. Jayakar is known as a scholar, a courageous social reformer and a nationalist politician, who for over two decades served his country well . . . . Now that he is called upon to serve India in a different and distinguished capacity, he may be relied upon to acquit himself therein with credit and dignity". Fifty-seven years of age, he has had a successful career at the Bar, but to the public he is known chiefly for his political attainments. He was leader of the Swarajya Party in the Bombay Legislative Council till 1925 and represented Bombay City in the Delhi Assembly between 1926 and 1930. In 1930 he was leader of the opposition at the Legislative Assembly. Later he was delegate to the Indian Round Table Conference and Federal Structure Committee, and member of the Indian delegation co-operating with the Joint Parliamentary Committee on the India White Paper. —*L.J.*, 1937, *p.* 314.

Commission and Omission.—The misadventures of a beautiful film star, even in the arid realms of contract, cannot fail in feature value. Thus Miss Frances Day, appearing in *Rowson* v. *Alexander,* inspired du Parcq, J., to creative endeavour in the law of agency, and caused staid readers of *The Times* (May 1) to wonder why the theatrical and cinematic news had been transferred to the law report page. In the law relating to commission this case is of the first importance. The actress had promised the agents (who secured her a contract) to pay to them as commission a percentage on salary paid to her. When she (admittedly wrongfully) broke her contract with her employers the agents automatically lost their percentage, and claimed that Miss Day had broken an implied warranty not to prevent the agents from earning their commission. The learned Judge was at a loss whether to treat the actress as the vendor of a house refusing to complete, so as to apply *Trollope* v. *Martyn,* (1934, 2 K.B. 436), or as the owner of a business refusing to sell goods to customers introduced by a traveller. The former, of course, would be liable if his refusal were justified; the latter not liable, even if his refusal were wrongful. The learned Judge found that the only analogue to Miss Day's promise to the agent was a charter party, and held that by her wrongful prevention of the agent from earning his commission she had made herself liable in damages for breach of warranty. If the question how a breach of contract can be a wrong to a third person was, for the purposes of this action, successfully begged, the fault, dear Brutus, was not in our Stars.—*L.J.*, 1937, *p.* 317.

Baron Martin and Royal Birthdays.—It was in or about the year 1902 that Mr. Herman Merivale published a book called *Bar, Stage and Platform,* in which appeared many excellent anecdotes and some jests concerning judges and lawyers of the past. He made a mistake, however, in a reference to Baron Martin, describing him erroneously as a "famous Yorkshire racing judge", and his accent as "broad Yorkshire". The learned Baron, as a well-informed reviewer observed, "was the son of Samuel Martin of Newtownlimavaddy—immortalised by Thackeray—in the County Londonderry. There he was born in the year 1801, and thence, in due course, he proceeded to Trinity College, Dublin. It was only after he had gone into voluntary exile that he became acquainted with the moors and cities of Yorkshire; and he would have resented bitterly, and with justice, the charge that he ever lost the purity of his North Irish accent."

That he was a sporting judge was true; and, like the first Lord Russell of Killowen, Lord Brampton, and other judges of more modern times, he was a member of the Jockey Club. Unlike the others, Baron Martin won with his racehorses certain substantial trophies, which are still treasured by his descendants. It is

said of him that when the date of an important racing fixture was approaching it was his habit to consult an almanac. When he found, as he did not infrequently, that the birth of a member of the Royal family had occurred on the day in question, "he would suggest to the Bar that, as a mark of respect, the Court should adjourn. And to this proposal a loyal and patriotic assent was invariably accorded."—*L.J.*, 1937, *p.* 331.

An Aid to Hearing.—Deafness has rarely, and then only with great reluctance, been regarded by any judge as an adequate reason for his voluntary retirement; even when by reason of his unacknowledged infirmity, all his judgments are delivered in cases which are only part heard.

Baron Martin was one those who suffered from defective hearing; and when he had been a judge for a quarter of a century his deafness drove him into retirement. "Though the time had nearly come," says a biographer, "for the close of his judicial life, the Bar was sorry to lose him, and there was a great gathering of counsel at his public leave-taking in January, 1874. It was during the valedictory address of Sir Henry James A.G., that it became apparent to all beholders that a miracle had somehow been accomplished. 'Sam' Martin, his deafness notwithstanding, was obviously following the remarks of the Attorney-General with attention and interest. And that he had heard every word was placed beyond doubt when, in his reply he duly acknowledged each several compliment which Sir Henry had paid him. To the few only was it known that the tactful law officer had taken the precaution of presenting to the retiring judge a written copy of the speech which he proposed to make." It was the Baron who, on the Western circuit, once spoke of a member of the Junior Bar who afterwards became Lord Coleridge, C.J., in terms which Mr. Coleridge regarded as a reflection on his professional conduct and said so in language of exquisite precision and purity. The Baron hastened to explain that he had been completely misunderstood and to assure "the accomplished scholar, the graceful man of letters . . . . . . " that he had always regarded him as "a most respectable young man".—*L.J.*, 1937, *p.* 331.

Precedents and Pleadings.—"Pleadings therefore," observes Lord Atkin in a significant preface to Volume I of the new *Encyclopaedia of Court Forms and Precedents in Civil Proceedings* [Butterworth & Co (Publishers), Ltd.], "pleadings therefore still test the competent lawyer: and while precedents seem an almost necessary guide to the less experienced, they are often a valuable aid to the old hand both as a means of checking his own draft and an occasional clue to a fault in his opponent's". Indeed, the pleader (it seems) is in like case with the poet: as the

late John Drinkwater remarked, varying the adage with caustic truth, *poeta nascitur et fit.* If he be a poet, a man must be born to poetry, yet without continuous discipline he shall not come into his inheritance. The consummate pleader is he who, at the first, has so modelled himself upon the precedents of his masters in the law, placing the first clause first, and the last clause last, and marking the peculiar rhythm and the latent precision in the meaning of words that after many years of severe self-training he has at the last won for himself the mastery of his material and can rejoice in his facile ability to produce a pleading which he can justly regard as a legal work of art. Until that day, he must put his trust in precedents; to which, thereafter, he still will turn as to a touchstone to test the merit of his own.—*L.J.*, 1937, p. 354.

Royal Marriage Law.—Not without interest, also, are Mr. Mathew's references in the same chapter to the legal difficulties and rights of a Prince of Wales who would marry the woman of his choice. How King Edward VIII, by reason of his proposed marriage, ceased to reign is now a matter of unforgettable but recent history. Had the marriage difficulty occurred when he was Prince, what would have been the position? Mr. Mathew describes the provisions of the law as "singular enough".

"No Prince of Wales, being a descendant of King George II, says the 12 Geo. III, c. 11, is to be capable of contracting matrimony without the previous consent of the sovereign signified under the Great Seal and declared in council; and every marriage celebrated without such consent first had and obtained is to be null and void. So far so good. But a proviso adds that should such a descendant, being 25 years of age, persist in his resolution to marry against the wishes of the Sovereign, he may give 12 months' notice to the Privy Council and thereafter lead the lady of his choice to the altar. Such a marriage is to be good, 'as if this Act had never been made', unless within the 12 months both Houses of Parliament have expressed their joint and several disapprobation of the union. Parliament, therefore, has arrogated to itself the right to adjudicate between the Sovereign and heir-apparent in the event of dissension between them on this most delicate topic."—*L.J.*, 1937, *p.* 367.

The Marriage Bill.—The Marriage Bill for which the Government have granted facilities is now printed in the form in which it left Standing Committee A. The purpose of the Bill as stated by the promoters is "to strengthen the institution of marriage, and it starts well by forbidding divorce within five years of the date of the marriage. Accordig to the Bill as introduced, no decree was to be granted till the five years had elapsed. As amended clause 1 provides that no petition shall be presented till after that period. The grounds for divorce are enlarged, but not quite to the extent

proposed by the Bill. They include desertion for at least three years, and also cruelty and incurable unsoundness of mind; but the two extensions to habitual drunkenness and to imprisonment under a commuted death sentence have been struck out. It is difficult to see how matrimony in any real sense can exist where one of the spouses is an habitual drunkard. The clause in the Bill which defined the defences to proceedings for divorce by substituting a new section 178 in the Judicature Act, 1925, has been redrafted and is now a clause defining the duty of the Court on presentation of a petition for divorce; it has to inquire, so far as it reasonably can, into the facts alleged and into the questions of connivance, condonation and collusion. Practically, with the extension of jurisdiction to assizes, such inquiries become increasingly difficult.—*L.J.*, 1937, *p.* 372.

The Law of Contract.—We have already referred shortly to the Sixth Interim Report of the Law Revision Committee with its revolutionary recommendations as to the Statute of Frauds and the doctrine of Consideration. The Report quotes conflicting opinions as to the merits of the Statute, which was stated to be passed "for prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury and subornation of perjury". But according to a judicial view in which Lord Mansfield concurred, the Statute, if it had been carried out according to the letter, "would have done ten times more mischief than it has done good, by protecting, rather than by preventing frauds". And so it was not carried out to the letter, but to impart into it judicial qualifications required a great mass of legislation. So far as the statute related to contracts for the sale of land, it was tempered by the doctrine of part-performance, and the statutory provision and the qualifying doctrine have been transferred to the Law of Property Act, 1925. In that safe harbour the Report appears to leave them undisturbed, but we are likely to see a ruthless overhauling of the other provisions of section 4 of the Statute upon which the law of Contract has been largely based. To this no objection need be taken, but the proposed change in the doctrine of Consideration is a more serious matter. Many of the Members of the Committee, the Report says, would like to see "the doctrine abolished root and branch," but it is recognised that such a proposal would "almost certainly arouse suspicion and hostility and the Committee only recommend that the doctrine should be pruned of most of its mischievous features." It should be possible to do this without destroying a distinctive feature of the English Law of Contract.—*L.J.*, 1937, *p.* 372.

Reprisals.—Germany's act of reprisal after the still unexplained attack on the battleship *Deutschland* by Spanish Government aero-

planes, with its heavy list of killed and injured, has been very generally regretted. Admittedly the provocation was extreme, and though the incident is not comparable with the ruthless ferocity of the destruction of Guernica and the massacre of the civil population—which is reported to have been the work of German aeroplanes—yet it strongly emphasises the necessity of restraint in the use of modern and terrible modes of warfare. Any reference to such occurrences should not omit to recognise that the Government forces have been, also according to reports, guilty of similar excesses, notably in the destruction of Oviedo. Under the circumstances it is unfortunate that the German Government have resorted to the uncertain and objectionable practice of reprisals. Reprisals, even in war, can only be justified, if at all, on the ground of necessity, and in any case it is repugnant to both justice and humanity to involve at random the innocent in the punishment of the guilty. But as between the German and Spanish Governments the German act of reprisal was done during a time of peace, and though reprisals during peace have been resorted to for the purpose of bringing pressure on an offending State, they do not usually proceed beyond seizure of property and embargo on ships. It may be correct in logic for them to be proportioned to the offence, but to carry logic to the extent of taking life is entirely without justification. No doubt every effort will be made—we trust with success—to prevent the recurrence of such an incident.—*L.J.*, 1937, *p.* 387.

Vale atque Ave.—Time is making its mark on the constitution of the High Court. We noticed last week the retirement of Mr. Justice Horridge after 27 years' service on the Bench. This has been followed by the retirement of Mr. Justice Talbot, and one of the vacancies has been filled by the appointment of Mr. Frederick J. Wrottesley, K.C. Before his appointment to a judgeship in 1923, Mr. Justice Talbot had a great reputation as an ecclesiastical lawyer, and he was also counsel to the University of Oxford. Happily ecclesiastical litigation has now practically left the Courts; such matters are better dealt with elsewhere. But if there has been little opportunity in his own special sphere, Mr. Jusice Talbot has, in the general work of the High Court, well maintained by his judgments the high standard of the Judiciary, and his resignation after a comparatively short tenure of office is to be regretted. In the Privy Council, of which, like Sir Sidney Rowlatt, he becomes a member, he may still find opportunity for judicial work. Mr. Wrottesley, who now joins the Common Law Bench, took silk in 1926, and since 1930 has been Recorder of Wolverhampton. He brings to the judicial position the reputation of being a sound lawyer, and may be expected to be a very capable and useful judge.

—*L.J.*, 1937, *p.* 387.

Sir John Simon.—The change in Ministerial offices which is most interesting to lawyers is the transfer of Sir John Simon from the Home Office to the Chancellorship of the Exchequer. It is 22 years since Sir John, who, with Rufus Isaacs, F. E. Smith and Duke, was in the front rank of advocacy, refused the Lord Chancellorship in order, as was understood, to remain in politics as Home Secretary and the higher office went to Lord Buckmaster to be held however, by him for little more than a year. Sir John Simon's tenure of office was on that occasion also short, and he resigned on the question of Conscription. In 1916, when, after the Dublin rising and Mr. Birrell's resignation, Mr. Asquith went to Dublin, he wrote to Mrs. Asquith: "I am in despair for a Chief Secretary. If only Simon were available." But Sir John was spared that experience, and his career lay outside Ministerial office till he became Foreign Secretary in 1931. Meanwhile, he rendered signal service to the country by his speeches in 1926 during the General Strike. One in the House of Commons on May 6, with its apt quotation,

> "O! it is excellent
> To have a giant's strength, but it is tyrannous
> To use it like a giant,"

struck home and was a leading factor in bringing the Strike to a close. And as Chairman of the Indian Statutory Commission (1928-30), he paved the way by the Report for the new India Constitution, and happily went outside the scope of the Commission's reference to propose the inclusion of the Princes in a Federal India. Sir John Simon's second tenure of the Home Office has been marked by sympathetic efforts at humanising the contact of police administration with the people, and the Exchequer will furnish him with a new opportunity of employing his great and versatile ability. But there should still be possibility of his doing public service in a higher and more influential position.—*L.J.*, 1937, *p.* 387.

Divorce Reform.—We now have the latest edition (Bill 117—printed June 1) of the Marriage Bill as it left the Commons. No one knows, of course, what amendments, if any, the Lords will insert in it and how far the sponsors of the Bill will yield. We may assume without much fear of disappointment that the Bill will become law this year and will be known as "Herbert's Act"—as it should be. It is timed to come into operation at the beginning of next year, so that those who practise in the Divorce Court will have the Long Vacation in which to master its details. We think there will be general approval for the new law that peope who get married cannot be heard to petition for divorce for five years. The scandalous state of affairs in which reckless people (sometimes, but not always, young) rush into matrimony will possibly be remedied by this change, and it secures time for possible forgiveness and

reform of which philosophers, churchmen and lawyers alike approve. Other changes to be made are too numerous to mention; but the long unhappiness of one spouse tied to another who is hopelessly insane, persistently cruel or persistently neglectful will at length, and not too soon, find a remedy. We hope next week to publish an article setting out shortly the present state of the Bill before it goes for consideration by the Lords.—*L.J.*, 1937, *p.* 388.

The "Leader of the Opposition".—The discussion on Thursday of last week in the House of Commons on the third Reading of the Ministers of the Crown Bill raised a number of interesting questions. There was what Sir Stafford Cripps called the perennial problem of the anomalous position of the Law Officers with regard to salary; there was the relinquishment of private practice by professional men who become Ministers of the Crown; and there was the proposal for the payment of a salary to a person who is now to receive legislative recognition as the "Leader of the Opposition". As to the first question, it is always a matter of surprise to a person unaccustomed to the traditions and practice of the Bar that a Law Officer should receive payment for his services far in advance of any other member of the Government. It is not that he has to work hard—"to spurn delights and live laborious days"—and nights. Other people have to do that. Nor is it that their work has greatly increased of recent years. The increase became marked in Lord Alverstone's day, and led to Lord Salisbury requiring in 1895, that private practice should be given up. Sir Richard Webster accepted the Attorney-Generalship on these terms, but Sir Edward Clarke declined to join him as Solicitor-General. Since then there has been no idea of going back to the old custom, and with the continued growth of calls from Government Departments for the advice of the Law Officers, it would be impossible for them to combine private practice with public duties.—*L.J.*, 1937, *p.* 403.

Law Officers' Brief Fees.—The special difficulty in regard to the emoluments of the Law Officers lies in the fees for court work. Assistance to the Government and Government Departments, and to Parliament, in the shape of advice, and the oversight of the drafting of Bills, might well be covered by a fixed annual sum, and such sums the Law Officers receive. And at the time when private practice was given up, as we have said, in 1895, the Government proposed that contentious work should be covered by a further fixed sum of 3,000*l.* But to this Lord Alverstone strenuously objected, and his objections were voiced again in the House of Commons last week. There are occasions when Government work requires the employment of special counsel, but economically minded officials would not incur this extra expense if the Law Officers were always available

at a flat rate. And although, according to old tradition, the Crown is too proud either to pay or receive costs, the tradition has faded away, and in taxing costs the Taxing Master has nothing to go on if the Law Officer's brief is not marked. "The Government", wrote Lord Alverstone, "recovers in the course of a year a considerable amount in costs from litigants who would not unnaturally object to being charged a fictitious brief fee". This is a practical difficulty which can, perhaps, be got over, and it would be an advantage if the question of the Law Officers' emoluments could be settled on a satisfactory basis so as to avoid the appearance of their being overpaid as compared with other members of the Government. Sir Stafford Cripps, in a useful contribution to the debate, urged that the functions of the Law Officers should be reviewed, and an inclusive salary fixed for all the work required to be done for Parliament or the Government. And he appears to have successfully got rid of the practice for the Law Officer to appear in cases of murder by poisoning. That is work for the ordinary Criminal Bar.—*L.J.*, 1937, *p.* 403.

What is a Charity?—The law, said Lord Coke, is "perfection of reason". This gratifying statement was reflected in *Goggs* v. *Bernard,* which settled the principles of the Law of Bailment: "Nothing is law that is not reason". A fortiori, this should be so when we come to the Law of Charities, for the law so favours charities that it will not let a charitable gift fail. But at the outset there is the question what is a charity, and if a gift cannot pass the test, the law cares nothing for it and the money goes to the next of kin. But the law has left the test of charity extremely vague, and that is hardly a mark of the perfection of reason. It is laid down in one case that a gift for the good of a particular parish is a valid charitable gift (*A. G.* v. *Lonsdale,* 1 Sim. 105). But change the wording a little, and let the gift be to the vicar of the parish for distribution among such parochial institutions or purposes as he shall select, and the gift is not charitable. The parish may have had an ecclesiastical object once, but with the passing of time the objects of the parish have widened; these are no longer exclusively religious, and the gift just stated failed (*Re Stratton,* (1931) 1 Ch. 197; 100 L.J. Ch. 62). In *Re Ashton's Estate* (Times, 5th inst.), Luxmore, J., faced by this authority, held that gifts to the vicars and churchwardens of two parishes "for parish work" were also not necessarily confined to religious purposes and were void. But whether this was a correct following of previous decisions or not, it is obvious that if such a gift does not pass the test of being charitable, neither can the Law of Charities pass Lord Coke's test of being "perfection of reason".—*L.J.*, 1937, *p.* 404.

Consulting a Solicitor.—The large number of home-made wills and the much larger number of home-made contracts bear additional testimony to a pointed observation made in the Sixth Interim Report of the Law Revision Committee (Cmd. 5449). They recommend (inter alia) that S. 11 of the Married Women's Property Act, 1882, should be extended to all life, endowment and education policies in which a particular beneficiary is named (p. 30; par. 49). It is true, they say, that the same result can be achieved by creating an express trust, on the part of anyone who knows the law. "But as it is not the practice of the average man", they sagely continue, "to consult his solicitor before taking out an insurance policy, we feel that it is desirable to make a statutory provision on the subject". The justice of the observation will not be gainsaid. How often does "the average man"—his legal prototype "the reasonable man" will be easily recognised—how often does he fail to consult his solicitor until the horse has escaped? With a little forethought, the stable door might have been bolted in time and a luckless litigant saved his costs. For in the end to his solicitor he needs must come; why not at the first? Think of the small estates that, through the testator omitting these precautions, from time to time become depleted; or of the diputes upon a commercial contract loosely drawn in the vague language of "the average man". The art of draftsmanship has gone out of fashion, to the detriment not so much of the lawyer, as of "the average man" himself.—*L.J.*, 1937, *p.* 405.

Veterans in the Law.—Although Viscount Craigmyle, who celebrated his eighty-seventh birthday this week, is no longer in active service as a Lord of Appeal in Ordinary, it may be said of him, as was said of one of old, that his eye is not dim nor his natural force abated. To the reports he made many notable contributions; his vigorous dissenting judgment in the stress of war time in *Rex* v. *Halliday,* [1917] A.C. 260, on the question of the validity of a statutory regulation giving power to imprison a naturalised alien as a person of hostile origin and associations, is still remembered for its vigour and cogency of reasoning, and has been preferred by many constitutional lawyers to the decision of the majority. His quondum colleague in the House, Viscount Dunedin, is senior by a year, and of him, too, it can be said that even at this advanced age his occasional letters in *The Times* show that the virility of his thought and powers of expression have suffered no diminution by the lapse of years. But it would seem that among those in the highest ranks of the judiciary longevity is a notable characteristic. Lord Eldon was eighty-seven, but in this matter he was easily out-distanced by Lord Halsbury, who attained ninety-eight. When, in 1900, Lord Morris, as a Lord of Appeal, retired, and found that he was to be succeeded by Sir

Nathaniel Lindley, he quietly observed that "a worn-out old man of seventy-three had been succeeded by a lad of seventy-two!" In such fashion do these Lords of Appeal retain their juvenility of spirit.—*S.J.*, 1937, *p.* 425.

Solicitors in the Cabinet.—In the new Cabinet formed by Mr. Neville Chamberlain the solicitor branch of the profession is well represented by two distinguished members—Sir Kingsley Wood, who retains his former office as Minister of Health, in which he has done yeoman service, and Dr. Leslie Burgin, who was included in the Coronation honours as the recipient of a Privy Councillorship in recognition of the excellence of his work in the post of Parliamentary Secretary to the Board of Trade, and who now succeeds Mr. Hore Belisha as Minister of Transport, an office of continually growing importance in which he will find abundant scope for his energies and tactical skill. Time was, and that not so very long ago, when the appointment of a solicitor as a member of the Government, even outside the Cabinet, would have occasioned some surprise as being not in accordance with the conventions in such matters; but this former attitude received its quietus when Mr. H. W. Fowler (afterwards Lord Wolverhampton) was invited by Mr. Gladstone to undertake the duties of President of the Local Government Board with a seat in the Cabinet, an office in which he certainly showed marked ability and constructive power. In more recent years not a few solicitor members of the profession have served in the Cabinet, where their practical knowledge of affairs proved of great value, and one of them, Mr. Lloyd George, achieved the distinction of being the first to attain to the highest office in the Government.—*S.J.*, 1937, *p.* 445.

The Prime Minister's Official Status.—The new Premier, Mr. Chamberlain, comes to an office which, though long the most important in the realm, had not till quite recent years acquired any legally defined status. Walpole, who, for many years wielded immense power as head of the Government, was, we are told, unwilling to be called "Prime Minister", because in the popular mind of his time that term signified not a leader chosen by the people, but a favourite of the Court, and so, when charged with being "sole Minister" or "prime vizier", he declared with some emphasis that he was only one of the King's Council and had no more voice in affairs than any other member of the Cabinet. Later developments gave, however, to the chief Minister a preponderating influence, and the title became generally used. Lord Beaconsfield described himself as "Prime Minister of England" in the Treaty of Berlin; but it was not till 1905 that the holder of the office acquired, as such, an official status. In that year King Edward VII by a royal warrant, which, after reciting that "the precedence of our Prime Minister

has not been declared and defined by due authority", proceeded to declare "Our Royal Will and Pleasure that in all times hereafter the Prime Minister of Us, Our Heirs and Successors shall have place and precedence next after the Archbishop of York". The first statutory use of the title is in the Chequers Estate Act, 1917. It is of interest to recall that the new Prime Minister in his former capacity as Chancellor of the Exchequer, had a link with the law in that, for the last few years he presided in the Lord Chief Justice's Court on the morrow of St. Martin at the ceremony of the nomination of the sheriffs. In earlier days this was not, as it now is, the only link which the Chancellor of the Exchequer had with the Courts, for it fell to him, even when a layman, to preside in the Court of Exchequer when the Barons were equally divided. On one occasion Walpole, when Chancellor of the Exchequer, had to spend three days in this duty and gave the casting vote in the decision.—*S.J.*, 1937, *p.* 445.

Solicitors' Undertaking and Personal Liability.—The attention of readers may be drawn to an opinion recently expressed by the Council of The Law Society on a point frequently arising in practice and to the course which the Council proposes to take in the matter. The question relates to the extent to which a solicitor incurs personal liability when giving an undertaking on behalf of a client. In the May issue of *The Law Society's Gazette* it is stated to be common knowledge that in order to facilitate completion of a sale or purchase a solicitor will give an undertaking, which nearly always the solicitor on the other side, knowing nothing of the client, would not accept, unless he thought he was getting an undertaking from the solicitor himself. In such cases the Council has expressed the opinion that the use of words such as "on behalf of my client" or "on behalf of the vendor" does not make the intention sufficiently clear, and it is considered that further or different words are necessary if the solicitor does not intend to accept personal liability. "Accordingly", it is said, "where, on the completion of a sale or purchase of property, a solicitor gives an undertaking 'on behalf' of his client without any further qualification, then in the Council's view, the solicitor should himself implement it, and if he fails to do so the Council will bring pressure to bear upon him to compel him to give effect to the undertaking as a matter of professional etiquette". The Council also adverts to the obvious desirability of it being made clear in the undertaking itself whether or not the solicitor is intending to accept personal liability. We desire to express our indebtedness to our contemporary for the opportunity afforded by the note referred to of bringing the matter to the notice of our readers.—*S.J.*, 1937, *p.* 446.

A Loss to Tradition.—The resignation of Mr. Justice Horridge now that Avory, J., is at rest and Eve, J., liberated from law to follow rural fancies, leaves the High Court deprived of the familiar feeling of an almost patriarchal tradition. Far distant now seems the year when Thomas Horridge and Horace Avory, elevated to the Bench within a day of each other, inspired the rhyme in celebration of the event:—

"'Well brother, well', said Mr. Justice Avory,
'We're judges now; I've gained extensive knowledge
Of crime and criminals', 'And so of knavery
You'll be the scourge' said Mr. Justice Horridge."

Both belonged to a tradition of quiet judicial efficiency which did not lend itself to satisfying the journalistic avidity for anecdotes, but each displayed on occasion the flair for the apt word. Thus, once before Horridge, J., there came an action brought by Sam Mayo, the comedian, against a colleague who was alleged to have borrowed one of his songs. He recited it in the witness-box, each verse ending with the words "I've only come down for the day". Before it had gone very far, however, a settlement was reached, and the judge remarked: "He will now be able to add another verse with regard to this Court—that he only came down for the day".—*S.J.*, 1937, *p.* 456.

BOOK REVIEWS.

Possession of Immovable Property by Sidhangshusekhar Chakravarti, Advocate, Patna High Court, Gaya, with a Foreword by P. R. Das, Esq., Barrister-at-Law, 1937. Price Rs. 5. Published by The Book Company, Ltd., College Square, Calcutta.

In this book the learned author has dealt with the subject of possession in law in all aspects and its consequences. It is thus not a commentary on any enactment and the author had to collect from different sources his material for the book on a difficult subject. In the first chapter, he deals with the general principles relating to possession and in later chapters in relation to co-ownership, landlord and tenant and mortgages. Then he treats of adverse possession and trusts and religious endowments and lastly in relation to future estates and interests. Thus it will be observed that the entire ground in the subject has been covered; the case-law has been noticed clearly bringing out the principles illustrated by them. We have every hope that the merits of the book will be appreciated by lawyers and judges.

Hand Book of Hindu Law by M. D. Manek, B.A., LL.M., Fourth edition, 1937. Price Rs. 3-8-0. Ramakrishna Brothers, Law Publishers, Poona.

This Hand Book of Hindu Law sets out clearly the principles of Hindu Law. Its popularity can be judged from the fact that

four editions of the book have been called for in a comparatively short period of time. The book is mainly intended for students preparing for the law examinations and it satisfies their requirements exceedingly well. It is not without its use to lawyers who will find it helpful to them. It is of interest to note that the latest enactment relating to the Hindu women's rights to property has been given in the book and also commented on. We are hopeful that the book will continue to enjoy the popularity of the previous editions.

The LAW AND PROCEDURE OF EXECUTION by Kumud Nath Bhaumik, B.L., 1937. Published by The Eastern Law House, 15, College Street, Calcutta.

The subject of execution of decrees and orders is a sufficiently complicated one to deserve a separate text book on it. It is a matter for satisfaction that Mr. Bhaumik who is familiar to us as a writer on legal subjects has brought out a comprehensive book on the law relating to it. The cases on the subject are numerous and sometimes conflicting. There are also the all-India and local amendments to the Civil Procedure Code on the subject, as also Civil Rules and Orders bearing on execution. This book which gives all the information on the subject noticing the cases in their appropriate places will be found to be of use to the members of the bench and the bar.

TRIAL BY JURY AND MISDIRECTION by Sir Manmatha Nath Mukerji, *Kt.*, M.A., B.L., 1937. Price Rs. 10. Published by The Eastern Law House, Calcutta.

It is a matter of gratification that Sir Manmatha Nath Mukerji should have found it possible to write a treatise on the subject of trial by jury and misdirection. His great experience as a prominent lawyer on the criminal side of the bar and his ripe wisdom on the bench invest the book with unique interest. The book has been divided into four parts, the first part dealing with the history of the system of trial by Jury in England and India and the later parts with trials before the High Court and Courts of Session, misdirection and appeals, reviews and references. In a book of this description, it is needless to add that all the relevant cases and the principles laid down by them have been noticed in their appropriate places. We have no doubt that the excellence of the book will be widely appreciated and it will be largely used by the bench and the bar with profit.